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NOLAN TURNER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NOLAN TURNER,

Plaintiff,

vs.

THOR DAHL CONTAINERSHIP K.S., and
DOES 1-20,

Defendant.

Case No.: C07-04377 MHP

**JOINT CASE MANAGEMENT
STATEMENT; RULE 26(f)
STATEMENT**

JOINT CASE MANAGEMENT STATEMENT

The parties to the above-entitled action submit this Joint Case Management Statement and [Proposed] Case Management Order and request the Court to adopt it as the Case Management Order in this case, pursuant to Federal Rule of Civil Procedure 16 and Civil Local Rule 16-9.

1 **1. Jurisdiction and Service**

2 On November 14, 2006, Plaintiff Nolan Turner filed suit in the Superior Court of
3 California, County of Alameda, naming Thor Dahl Containership K.S. as defendant. On July 27,
4 2007, Plaintiff served a summons and complaint on Thor Dahl pursuant to the Hague Service
5 Convention. On August 24, 2007 Thor Dahl removed the action to this Court pursuant to 28
6 U.S.C. §1441(b) (diversity). This Court has original jurisdiction of the action under 28 U.S.C.
7 §1332.

8 **2. Facts**

9 Plaintiff: Plaintiff was a longshoreman who was assigned to lash/unlash containers on
10 defendant's vessel. He was walking on the deck when the deck, plaintiff believes a grating, gave
11 way. Plaintiff fell through the opening injuring his neck back, arms, and shoulders.

12 Defendant: On May 14, 2004 Thor Dahl Containership K.S. was the operator of the
13 vessel HYUNDAI EXPLORER. Thor Dahl was unaware of any allegation of an accident until
14 this litigation began. There was no report of an accident, and thus there was no ship's
15 investigation of any accident.

16 **3. Legal Issues**

17 This is essentially a maritime negligence case. The shipowner's duty, when it arises, is
18 one of reasonable care in the circumstances. Under the applicable law, Longshore and Harbor
19 Workers Compensation Act (LHWCA), 33 U.S.C. section 905(b), the circumstances in which a
20 shipowner's duty of care arise in only three circumstances: where the vessel is "turned over" to
21 the stevedore, where the ship maintains its "active operations," and where there is a "duty to
22 intervene." *See Scindia Steam Navigation Co., Ltd. v. De Los Santos*, 451 U.S. 156, 164-165
23 (1981); *Howlett v. Birkdale Shipping Co., S.A.*, 512 U.S. 92, 98 (1994).

24 The shipowner must "exercise ordinary care under the circumstances to have the ship and
25 its equipment in such condition that an expert and experienced stevedore will be able by the
26 exercise of reasonable care to carry on its cargo operations with reasonable safety to persons and
27 property...." *Scindia Steam Navigation Co., Ltd. v. De Los Santos*, 451 U.S. 156, 170 (1981)
28 (describing "turnover" duty).

1 The shipowner must exercise reasonable care if it “actively involves itself in the cargo
2 operations and negligently injures a longshoreman or if it fails to exercise due care to avoid
3 exposing longshoremen to harm from hazards they may encounter in areas, or from equipment,
4 under the active control of the vessel during stevedoring operation.” Id. at 167 (active operations
5 duty).

6 Finally, a vessel has a “duty to intervene” in the following circumstances: (1) it has
7 actual or constructive knowledge of a dangerous condition, (2) it knows that the longshoremen
8 are continuing to work despite the existence of an unreasonable risk of harm to them, and (3) it
9 could not reasonably expect that the stevedore would remedy the situation. Taylor v. Moram
10 Agencies, 739 F.2d 1384, 1387-1388 (9th Cir. 1984) (citing Scindia).

11 Thor Dahl must conduct discovery in order to explore which duty, if any, is implicated in
12 this case. Plaintiff contends that the ship owner violated these duties.

13 **4. Motions**

14 Thor Dahl does not currently anticipate bringing any motions but may need to bring a
15 dispositive motion once it has conducted sufficient discovery.

16 **5. Amendment of Pleadings**

17 No such amendments are anticipated.

18 **6. Evidence Preservation**

19 Since learning of the accident in 2007, three years after the alleged events, Thor Dahl has
20 reviewed its records for any information pertaining to the allegations and has instructed the
21 vessel to maintain any surviving records for the relevant time period. Plaintiff has sent to
22 defendant the disclosures required by FRCP 26(a)(1). Defendant will likewise make its initial
23 disclosures before the case management conference.

24 **7. Disclosures**

25 The parties intend to make their initial disclosures before the case management
26 conference.

27 Plaintiff made the following disclosures on 12/6/07:

26(a)(1)(A): Plaintiff's medical providers, including Kaiser physicians and Dr. Fred Blackwell; Walking Boss "Roach" and co-worker Phil Rodriguez and possibly other co-workers and/or employees of the stevedore whose names are presently unknown.

26 (a)(1)(B): Medical records:

1. Kaiser Richmond through approximately June 1, 2007;
2. Dr. Fred Blackwell through approximately November 1, 2005;
3. Alleged transcription of recorded statement of Plaintiff dated May 20, 2004;
4. OWCP Form LS202 dated May 25, 2004
5. Earnings records PMA and Holiday Inn

26 (a)(1)(C): Medical records from Dr. Blackwell include at least a partial listing of his expenses according to the compensation carrier, \$7,767 was spent on medical care as of August 2006. Plaintiff was off work from May 15, 2004 to approximately August 5, 2004. His average weekly wage as of May 15, 2004 was approximately \$545.03 and lost wages approximately \$7,000. Plaintiff was again off work from December 17, 2004 to February 15, 2006. His average weekly wage for this disability period was \$931.00 and lost wages approximately \$57,000. In addition, due to the residual effects of the injury of May 14, 2004, Mr. Turner has lost additional income of an amount estimated at \$50,000. General damages at this time are estimated to be \$200,000.

Plaintiff is enclosing the Decision and Order of the Office of Administrative Law Judge Alexander Karst dated September 26, 2006 listing the medical expenses paid.

8. Discovery

Thor Dahl currently anticipates the following non-expert discovery before mediation: deposition of Plaintiff; independent medical examination of Plaintiff; the standard number of interrogatories and requests for production; subpoenas for medical, union, and Department of Labor (LHWCA) records of Plaintiff. If necessary Thor Dahl may depose a witness, as yet unidentified, to the alleged accident or any investigation; such a witness would likely be a non-party co-worker of Plaintiff's, i.e., a longshoreman or superintendent.

1 Plaintiff anticipates deposing several ship's officers including the chief mate and duty
2 officer at the time of the accident as well as other members of the ship's crew on duty.

3 **9. Class Actions**

4 This is not a class action case.

5 **10. Related Cases**

6 There are no related cases.

7 **11. Relief**

8 Thor Dahl does not seek any damages from Plaintiff. Plaintiff's damages as far as they
9 are known are listed in paragraph 7.

10 **12. Settlement and ADR**

11 The parties have agreed to attend a private mediation before mediator Jack McGlynn
12 (JAMS) on or before February 18, 2008. They are in the process of setting a mutually agreeable
13 date and time.

14 **13. Consent to Magistrate Judge for All Purposes**

15 The case was reassigned to this Court upon request for reassignment to a United States
16 District Court Judge.

17 **14. Other References**

18 Not applicable.

19 **15. Narrowing of Issues**

20 Thor Dahl must identify the issues in this case via discovery. At this time it appears there
21 are at least issues concerning (1) the cause of the alleged accident, (2) the nature and extent of
22 Plaintiff's alleged injury, and (3) whether there is any triable issue of material fact on the
23 question of negligence.

24 **16. Expedited Schedule**

25 The parties do not request any expedited case schedule.

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1 DATED: December 7, 2007 EMARD DANOFF PORT TAMULSKI & PAETZOLD LLP

2
3 By /s/ Katharine Essick Snavelly
4 James J. Tamulski
5 Katharine Essick Snavelly
6 Attorneys for Defendant
7 THOR DAHL CONTAINERSHIP K.S.

8 DATED: December 7, 2007 WELTIN LAW OFFICE

9 By /s/ Patrick B. Webb
10 Patrick B. Webb
11 Attorneys for Plaintiff
12 NOLAN TURNER

13 **Certification of Signatures**

14 I attest that the content of this document is acceptable to all persons above, who were
15 required to sign it.

16 /S/
17 Katharine Essick Snavelly
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